

**EXHIBIT TO DECEMBER 10, 2007
DECLARATION OF PHILIP R. HOFFMAN
IN OPPOSITION TO DEFENDANT'S
MOTION
FOR A PRELIMINARY INJUNCTION**

**PHAT FASHIONS LLC V. TORNADO
IMPORTS (CANADA), INC.**

Case No.: 07 Civ. 3278 (PAC)

EXHIBIT 55

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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4 PHAT FASHIONS, LLC.,

5 Plaintiff,

6 -against-

7 TORNADO IMPORTS (CANADA), INC.,

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Defendants.

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BARRISTER REPORTING SERVICE, INC.

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120 Broadway

New York, N.Y. 10271

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212-732-8066

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PLAINTIFF'S
EXHIBIT

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<p style="text-align: right;">6</p> <p>1 Nathanson</p> <p>2 background, starting with your</p> <p>3 undergraduate.</p> <p>4 A. BA from SUNY Stony Brook.</p> <p>5 Q. When did you graduate from SUNY Stony</p> <p>6 Brook?</p> <p>7 A. In '93.</p> <p>8 Q. After you graduated from SUNY Stony</p> <p>9 Brook, did you go immediately to law school?</p> <p>10 A. Yes.</p> <p>11 Q. Where did you go to law school?</p> <p>12 A. Brooklyn Law School.</p> <p>13 Q. When did you graduate?</p> <p>14 A. 1996.</p> <p>15 Q. Where did you start working after</p> <p>16 your graduation in 1996?</p> <p>17 A. I did several temp jobs leading up to</p> <p>18 my job at Pryor Cashman.</p> <p>19 Q. When you say "several temp jobs," can</p> <p>20 you explain that further?</p> <p>21 A. I worked for an agency and I did</p> <p>22 several assignments that they sent me on.</p> <p>23 Q. What kind of assignments did you do?</p> <p>24 A. Law -- law-related jobs.</p> <p>25 Q. Such as?</p>	<p style="text-align: right;">8</p> <p>1 Nathanson</p> <p>2 containing the bio of Eli Nathanson.</p> <p>3 (Whereupon Bio of Eli</p> <p>4 Nathanson was marked Defendant's</p> <p>5 Exhibit 24 for identification as of</p> <p>6 this date.)</p> <p>7 Q. Can you describe what Defendant's</p> <p>8 Exhibit 24 is?</p> <p>9 A. It's my bio.</p> <p>10 Q. Did you draft that biography?</p> <p>11 A. I think I did the initial draft. It</p> <p>12 might have been worked on by others as well.</p> <p>13 Q. Can you review it for a minute and</p> <p>14 let me know if all the information contained</p> <p>15 in it is accurate?</p> <p>16 A. It looks good -- actually, New York</p> <p>17 State Bar Association I know I was, but I'm</p> <p>18 not sure if I kept up with my dues, but</p> <p>19 other than that, it looks accurate.</p> <p>20 Q. Let me make sure I understand.</p> <p>21 You're not sure that you are affiliated with</p> <p>22 the New York State Bar Association?</p> <p>23 A. I was, but -- I think, but I'm not</p> <p>24 sure if I kept up with my dues.</p> <p>25 MR. HOFFMAN: If you haven't,</p>
<p style="text-align: right;">7</p> <p>1 Nathanson</p> <p>2 A. For example, I worked in this</p> <p>3 building for MetLife working on a big</p> <p>4 demutualization project.</p> <p>5 Q. What kind of work did you actually</p> <p>6 do?</p> <p>7 A. For MetLife?</p> <p>8 Q. For example?</p> <p>9 A. It's been so long. Certain contract</p> <p>10 administration. Actually, some of it was</p> <p>11 actually data entry.</p> <p>12 Q. When did you join Pryor Cashman?</p> <p>13 A. That was in '99, I think.</p> <p>14 Q. You joined Pryor Cashman in 1999?</p> <p>15 A. Yes.</p> <p>16 Q. What year did you make partner?</p> <p>17 A. Last year, 2006.</p> <p>18 Q. Did you make partner at the end of -</p> <p>19 2006?</p> <p>20 A. Yes.</p> <p>21 Q. Were you a partner effective</p> <p>22 January 2007?</p> <p>23 A. Yes.</p> <p>24 MS. SAMANTA: I'd like to mark</p> <p>25 as Defendant's Exhibit 24, a document</p>	<p style="text-align: right;">9</p> <p>1 Nathanson</p> <p>2 you'll let me know so that I can make</p> <p>3 the change on the website?</p> <p>4 THE WITNESS: Sure.</p> <p>5 Q. Other than the portion listing</p> <p>6 professional affiliations on your biography,</p> <p>7 is everything else contained in Exhibit 24</p> <p>8 accurate?</p> <p>9 A. Yes.</p> <p>10 Q. Mr. Nathanson, how did you come to be</p> <p>11 involved with Phat Fashions as a client?</p> <p>12 A. I started working with one of the</p> <p>13 partners in the firm who did a lot of work</p> <p>14 for them and that's how it began.</p> <p>15 Q. Which partner did you start working</p> <p>16 with?</p> <p>17 A. Brad Rose.</p> <p>18 Q. What time was that?</p> <p>19 A. Oh, that might have been back in, I</p> <p>20 guess '01, '02. 2001, 2002; around that</p> <p>21 time.</p> <p>22 Q. When you say it might have been, what</p> <p>23 is your best recollection of the time that</p> <p>24 you started working with Mr. Rose on Phat</p> <p>25 Fashions matters?</p>

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1 Nathanson
 2 A. Yes, that's my best recollection.
 3 Q. 2001 to 2002?
 4 A. Yes, around that time.
 5 Q. In that 2001 to 2002 time frame, what
 6 matters did you work on for Phat Fashions?
 7 A. Oh, it was -- at that time, it was
 8 minimal. I think just a license agreement
 9 here or there.
 10 Q. Did you work on Tornado-related
 11 matters for Phat Fashions at that time, 2001
 12 to 2002?
 13 A. No.
 14 Q. Can you name some of the transactions
 15 that you did work on at that time?
 16 A. There were other license agreements.
 17 I think one of the early ones was with a
 18 company called Paul Lavitt, L-A-V-I-T-T.
 19 That's one of the early ones that I can
 20 remember.
 21 Q. Pryor Cashman, was there a general
 22 team in place that worked on Phat Fashions
 23 matters?
 24 MR. HOFFMAN: Objection to the
 25 form. You can answer.

11

1 Nathanson
 2 A. I think Brad was the point person and
 3 I was one of the folks that was helping out.
 4 I don't know how many other people were
 5 involved at that time.
 6 Q. Over the course of time, this is
 7 beyond the 2001/2002 time period, was there
 8 a team in place that worked on Phat Fashions
 9 matters?
 10 A. I think that there was not. I don't
 11 know if there was a regular set team, I
 12 mean, because there are a lot of aspects,
 13 you know. But, you know, there were several
 14 people working on it throughout the period.
 15 You know, I don't know exactly who and when.
 16 Q. I didn't mean to imply anything by my
 17 use of the word "team".
 18 Was there a group of people that
 19 regularly worked for matters for Phat
 20 Fashions at Pryor Cashman?
 21 A. There was Brad and then I, you know,
 22 did transactional work, which obviously grew
 23 from the '01 period to now. And then there
 24 were other people working on other aspects.
 25 Q. Was Brad the most senior person of

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1 Nathanson
 2 the group of people that you just described?
 3 A. Yes.
 4 Q. Were you the next most senior person?
 5 A. Not in the beginning and not even
 6 now. I think there are other people working
 7 that are more senior.
 8 Q. Who is senior to you that works on
 9 Phat Fashions matters?
 10 A. My partner, Teresa Lee.
 11 Q. When did you begin to work on Phat
 12 Fashions matters involving Tornado?
 13 A. You know, I think any real work
 14 started with that recent draft amendment
 15 that we put together.
 16 Q. What time period would you estimate
 17 that to be?
 18 A. I don't remember exactly, but if I
 19 could see the document, it would probably be
 20 around that time.
 21 Q. We'll look through documents, but I
 22 want to get your recollection that you have
 23 now before you look at the documents.
 24 Do you have any estimate of when you
 25 first started working in Tornado matters?

13

1 Nathanson
 2 A. It was sometime in '06.
 3 Q. In '06?
 4 A. Yes, I think.
 5 Q. Was there a group of people at Pryor
 6 Cashman that worked on Tornado-related
 7 matters for Phat Fashions?
 8 A. Well, I think there might have been.
 9 There is no one else who worked on the
 10 amendment.
 11 Q. When you say "the amendment," what
 12 are you referring to?
 13 A. The draft amendment that we prepared
 14 for Tornado.
 15 Q. When you say there was no one else
 16 working on the amendment, do you mean that
 17 you were the only attorney at Pryor Cashman
 18 working on the amendment for Tornado?
 19 MR. HOFFMAN: Objection to the
 20 form.
 21 Q. You can answer.
 22 A. I believe so, yes.
 23 Q. Is it correct to say that you were
 24 the attorney at Pryor Cashman that had
 25 primary responsibility for the amendment

<p style="text-align: right;">14</p> <p>1 Nathanson</p> <p>2 regarding Tornado?</p> <p>3 A. Yes.</p> <p>4 MS. SAMANTA: I'd like to</p> <p>5 mark, as Defendant's Exhibit 25, a</p> <p>6 document bearing the Bates numbers</p> <p>7 PF1 through 36.</p> <p>8 (Whereupon Document bearing</p> <p>9 the Bates numbers PF1 through 36 was</p> <p>10 marked Defendant's Exhibit 25 for</p> <p>11 identification as of this date.)</p> <p>12 Q. I ask that you just take a look at</p> <p>13 the front cover for now.</p> <p>14 Did you draft that agreement,</p> <p>15 Mr. Nathanson?</p> <p>16 A. No.</p> <p>17 Q. Do you know who drafted the</p> <p>18 agreement?</p> <p>19 A. No.</p> <p>20 Q. Are you familiar with the agreement?</p> <p>21 A. Pretty much. I mean, I'd have to</p> <p>22 read it again; it's been awhile since I</p> <p>23 looked at it.</p> <p>24 Q. Was that a document that you</p> <p>25 maintained in your files when you were --</p>	<p style="text-align: right;">16</p> <p>1 Nathanson</p> <p>2 A. I don't know exactly. I probably got</p> <p>3 a copy from someone who had it.</p> <p>4 Q. Do you remember who that was?</p> <p>5 A. Not exactly, no.</p> <p>6 Q. Your best recollection is that you</p> <p>7 received this document, the August 1, 1998</p> <p>8 licensing agreement, around 2006?</p> <p>9 A. Yes, I mean that would be the first</p> <p>10 time I looked at it carefully in order to</p> <p>11 draft the amendment.</p> <p>12 Q. You don't recall exactly when you</p> <p>13 received it or how?</p> <p>14 A. It was around that time.</p> <p>15 Q. Do you recall, before going through</p> <p>16 the agreement, who signed this agreement on</p> <p>17 behalf of Phat Fashions?</p> <p>18 A. Do I recall? Not exactly. I have to</p> <p>19 look at it.</p> <p>20 Q. Go ahead and take a look at the</p> <p>21 document.</p> <p>22 Who signed the agreement on behalf of</p> <p>23 Phat Fashions?</p> <p>24 A. It looks like Russell Simmons.</p> <p>25 Q. Is that a fact that you were aware of</p>
<p style="text-align: right;">15</p> <p>1 Nathanson</p> <p>2 and, actually, I would ask that you not flip</p> <p>3 through it right now if you don't mind.</p> <p>4 Was that a document that you</p> <p>5 maintained in your files while you were at</p> <p>6 Pryor Cashman?</p> <p>7 MR. HOFFMAN: Objection to the</p> <p>8 form. When you say "your files," do</p> <p>9 you mean the firm's files or his,</p> <p>10 personally?</p> <p>11 MS. SAMANTA: I'll ask it both</p> <p>12 ways.</p> <p>13 Q. Was that a document that you</p> <p>14 maintained in your personal files at Pryor</p> <p>15 Cashman when you were at the firm?</p> <p>16 A. I don't know if I actually had this</p> <p>17 in my file before I started working on the</p> <p>18 draft amendment.</p> <p>19 Q. Did you have it in your file at some</p> <p>20 point?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall when that was?</p> <p>23 A. When I was working on the draft</p> <p>24 amendment.</p> <p>25 Q. How did you receive the document?</p>	<p style="text-align: right;">17</p> <p>1 Nathanson</p> <p>2 at the time that you received the document</p> <p>3 and were drafting the amendment?</p> <p>4 A. Yes.</p> <p>5 Q. You just don't recall it now?</p> <p>6 MR. HOFFMAN: Objection to the</p> <p>7 form.</p> <p>8 Q. You weren't able to recall it without</p> <p>9 looking through the document now?</p> <p>10 A. I would have assumed that.</p> <p>11 Q. When you say "I would have assumed</p> <p>12 that," what do you mean?</p> <p>13 A. Well, at that time Russell was the</p> <p>14 one who signed on behalf of Phat Fashions,</p> <p>15 at that time.</p> <p>16 Q. Let me clarify one thing about the</p> <p>17 procedure in this deposition: When I ask</p> <p>18 you a question, you should give me your best</p> <p>19 recollection or your best guess or whatever</p> <p>20 you have in your mind.</p> <p>21 So if there is an answer that you</p> <p>22 would have assumed something, you should</p> <p>23 answer that and I can follow up and ask</p> <p>24 whether it's speculation or an assumption,</p> <p>25 but I ask that you let me know whatever you</p>

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1 Nathanson
 2 have in your mind.
 3 A. Okay.
 4 Q. When I asked you: Do you know,
 5 without looking at that document, who signed
 6 it; what is your answer to that?
 7 A. Russell Simmons.
 8 Q. If I can draw your attention to
 9 Section 17 of the document. Are you
 10 familiar with that section?
 11 A. Yes.
 12 Q. What did you understand Section 17 to
 13 mean?
 14 A. The agreement can only be extended,
 15 waived or modified by writing signed by both
 16 parties.
 17 Q. What did you understand a writing
 18 signed by both parties to mean?
 19 A. A written amendment signature duly
 20 authorized by both parties. Meaning Phat
 21 Fashions and Tornado.
 22 Q. Did you ever have any
 23 conversations -- actually, let me direct
 24 your attention to Schedule C of the
 25 agreement. It's on PF29.

19

1 Nathanson
 2 A. Schedule C?
 3 Q. Right. Can you explain what the
 4 purpose of Schedule C is?
 5 MR. HOFFMAN: Objection to the
 6 form. I think he said he didn't
 7 draft it.
 8 Q. Can you explain what your
 9 understanding of Schedule C is?
 10 A. This is to set forth the definition
 11 of licensed products.
 12 Q. Specifically, what does Schedule C
 13 contain?
 14 A. You want me to read this?
 15 Q. No. What is your understanding of
 16 what Schedule C reflects, in terms of
 17 licensed products?
 18 A. These are the licensed products and
 19 the brands that the licensee is permitted to
 20 sell, among other things.
 21 Q. Let me draw your attention to the
 22 language stating, "All Phat Farm products
 23 excluding," and then there's a list of
 24 products.
 25 Is it your understanding that

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1 Nathanson
 2 Schedule C contains the products that
 3 Tornado is not licensed to sell under this
 4 agreement?
 5 MR. HOFFMAN: Objection to the
 6 form.
 7 A. It says what they can do and excludes
 8 certain other things that they can't do.
 9 Q. Are some of the certain other things
 10 that are excluded, lingerie, loungewear,
 11 women's and girl's dresses; is that
 12 accurate?
 13 A. Those are some of the exclusions,
 14 yes.
 15 Q. Do you know if any of these products
 16 were ever sold by Tornado?
 17 A. No.
 18 Q. When you say no, is that you don't
 19 know or they weren't sold by them?
 20 A. I don't know.
 21 Q. Did you ever have any conversations
 22 regarding the sale of Baby Phat products by
 23 Tornado?
 24 A. Any conversations?
 25 Q. Yes.

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1 Nathanson
 2 A. With whom?
 3 Q. With anyone?
 4 A. Baby Phat products?
 5 Q. By Tornado?
 6 A. I don't really recall, sitting here,
 7 about a specific conversation about that,
 8 although it's possible.
 9 Q. Do you recall general conversations
 10 regarding the sale of Baby Phat products by
 11 Tornado?
 12 A. I don't recall. You know, generally,
 13 I don't recall, though it's possible.
 14 Q. When you say it's possible, is that
 15 based on a recollection or --
 16 A. No, just based on the fact that I
 17 might not remember.
 18 Q. Do you have any knowledge of this
 19 agreement being extended by renewals?
 20 MR. HOFFMAN: Objection to the
 21 form.
 22 A. Are you referring to the renewals
 23 contained in here beyond the initial term?
 24 Q. Yes.
 25 A. Yes, I believe it had been extended.

<p style="text-align: right;">30</p> <p>1 Nathanson</p> <p>2 they were not paying their royalties always</p> <p>3 on time?</p> <p>4 A. No. This is just a general comment,</p> <p>5 it looks like, that I was relaying. But,</p> <p>6 you know, I wouldn't draw -- I mean, I don't</p> <p>7 think that I was drawing any specific</p> <p>8 conclusions.</p> <p>9 Q. There's no basis for your speculation</p> <p>10 earlier that maybe they were not paying all</p> <p>11 their royalties on time?</p> <p>12 MR. HOFFMAN: Objection to the</p> <p>13 form. You can answer.</p> <p>14 A. No.</p> <p>15 Q. If you look further in this e-mail,</p> <p>16 it reflects a discussion about accounting</p> <p>17 for BP sales. Do you know what that refers</p> <p>18 to?</p> <p>19 A. Accounting for BP sales?</p> <p>20 Q. Right.</p> <p>21 A. Yes, it looks like Peter must have</p> <p>22 told me that Tornado was reporting to Peter</p> <p>23 about certain BP sales.</p> <p>24 Q. Apart from looking at this e-mail</p> <p>25 now, do you have any independent</p>	<p style="text-align: right;">32</p> <p>1 Nathanson</p> <p>2 individuals, including you as a cc.</p> <p>3 Do you recall receiving this e-mail</p> <p>4 in or around March 2006?</p> <p>5 A. Looking at it now, yes.</p> <p>6 Q. Please take your time to flip through</p> <p>7 the document and the attachment.</p> <p>8 Do you recall any conversations with</p> <p>9 your client regarding this e-mail or the</p> <p>10 attachment?</p> <p>11 A. No phone conversations.</p> <p>12 Q. Do you recall any other</p> <p>13 conversations, not by phone, with your</p> <p>14 client regarding this e-mail or attachment?</p> <p>15 A. I think after I drafted the amendment</p> <p>16 and sent it to him, I might have had</p> <p>17 questions about the terms.</p> <p>18 MR. HOFFMAN: Who is "him"?</p> <p>19 A. I'm sorry, Bernt Ullmann.</p> <p>20 Q. I'm talking about the time period</p> <p>21 right around receiving this e-mail. Do you</p> <p>22 recall any conversations with Mr. Ullmann</p> <p>23 regarding this e-mail or terms or anything</p> <p>24 else?</p> <p>25 A. No.</p>
<p style="text-align: right;">31</p> <p>1 Nathanson</p> <p>2 recollection of that?</p> <p>3 A. No.</p> <p>4 Q. The second to last sentence here</p> <p>5 discusses, "nailing down exactly what</p> <p>6 Tornado is doing and the rights they have so</p> <p>7 that we, at least, have the paperwork in</p> <p>8 order."</p> <p>9 Do you remember writing that?</p> <p>10 A. Yes.</p> <p>11 Q. What paperwork, if any, did you get</p> <p>12 in order regarding Tornado that is referred</p> <p>13 to in this e-mail?</p> <p>14 MR. HOFFMAN: Objection to the</p> <p>15 form.</p> <p>16 A. I didn't receive anything.</p> <p>17 Q. Did you follow up?</p> <p>18 MR. HOFFMAN: Objection to the</p> <p>19 form.</p> <p>20 A. This is -- no.</p> <p>21 MS. SAMANTA: I'd like to show</p> <p>22 you a document that's previously been</p> <p>23 marked as Defendant's Exhibit 2.</p> <p>24 Q. This is an e-mail. The top e-mail is</p> <p>25 an e-mail from Bernt Ullmann to a number of</p>	<p style="text-align: right;">33</p> <p>1 Nathanson</p> <p>2 MS. SAMANTA: I'd like to show</p> <p>3 you a document that's been marked as</p> <p>4 Defendant's Exhibit 3.</p> <p>5 Q. Is this document, Exhibit 3, the</p> <p>6 amendment that you were referring to</p> <p>7 earlier?</p> <p>8 MR. HOFFMAN: I have an</p> <p>9 objection to form. I think, just for</p> <p>10 purposes of the deposition, when we</p> <p>11 talk about "amendment," it is our</p> <p>12 position that it is a draft.</p> <p>13 You have your position that it</p> <p>14 is not, but when we use the term</p> <p>15 "amendment," I guess we should figure</p> <p>16 out exactly what it is we mean.</p> <p>17 MS. SAMANTA: When I use the</p> <p>18 term "amendment," I'm referring to</p> <p>19 this document, Defendant's 3, and</p> <p>20 various permutations of that document</p> <p>21 and, later, if there are objections</p> <p>22 to form, we can state them on the</p> <p>23 record and we'll go from there.</p> <p>24 MR. HOFFMAN: Great.</p> <p>25 MS. SAMANTA: Can you read</p>

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1 Nathanson
 2 back the question.
 3 (Whereupon the record was read
 4 back by the reporter.)
 5 A. This is a draft of the draft
 6 amendment that I was referring to earlier.
 7 Q. When you say "draft of the draft
 8 amendment," what do you mean?
 9 A. Meaning this was a first draft of the
 10 amendment that I put together based on
 11 proposed terms forwarded to me by Bernt
 12 Ullmann.
 13 Q. Did this draft that you put together,
 14 to your knowledge, change?
 15 A. Change?
 16 Q. Right. You described it as a draft
 17 of a draft, which leads me to believe that
 18 the terms in this document, Exhibit 3,
 19 changed; to your knowledge, is that the
 20 case?
 21 A. Well, I don't recall ever working on
 22 it beyond this first draft.
 23 Q. You don't know whether it changed or
 24 not?
 25 A. The draft or the terms?

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1 Nathanson
 2 Q. I'm talking about Exhibit 3. The
 3 attachment to Exhibit 3?
 4 A. This draft, yes.
 5 Q. Do you know if there was ever another
 6 version of this attachment to Exhibit 3?
 7 A. I've never prepared another version,
 8 I don't believe.
 9 Q. You've never seen another version?
 10 A. Correct.
 11 Q. You're not aware of another version?
 12 A. Correct.
 13 Q. Who asked you to prepare the
 14 attachment to Exhibit 3?
 15 A. Bernt Ullmann forwarded to me the
 16 terms and, that is -- you know, usually
 17 means for me to start working on a draft
 18 based on the terms.
 19 Q. When you say Bernt Ullmann forwarded
 20 you the terms, are you referring to the
 21 e-mail that we saw as Exhibit 2?
 22 A. Yes.
 23 Q. Did you have any discussion with
 24 Mr. Ullmann about the terms of this
 25 agreement?

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1 Nathanson
 2 A. I might have sent him some questions
 3 about it, but I just don't remember, sitting
 4 here, exactly what those were or if I did.
 5 Q. Did Mr. Ullmann ever relay to you any
 6 conversations that he had with Tornado?
 7 A. No.
 8 Q. How did you decide what to include in
 9 the draft agreement that's attached to
 10 Exhibit No. 3?
 11 A. Well, I looked at the proposed terms
 12 forwarded to me.
 13 Q. That's Exhibit 2?
 14 A. Yes.
 15 Q. Did you discuss the agreement with
 16 anybody else at Pryor Cashman?
 17 MR. HOFFMAN: Objection to the
 18 form. You're saying "agreement"; do
 19 you mean amendment?
 20 MS. SAMANTA: Strike that.
 21 Let me restate the question.
 22 Q. Did you discuss the amendment with
 23 anyone else at Pryor Cashman?
 24 A. I don't recall ever doing that.
 25 Q. Let me direct your attention to the

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1 Nathanson
 2 amendment itself, the page Bates number
 3 PF142.
 4 A. Okay.
 5 Q. How did you come up with the minimum
 6 net sales numbers that are indicated here in
 7 this amendment?
 8 A. I believe we were given guaranteed
 9 minimum royalties and, by using the royalty
 10 rate, backed out and extrapolated the
 11 amendment net sales figures.
 12 Q. When you say the royalty rate, where
 13 did you get the royalty rate from?
 14 A. It must have been the original
 15 agreement.
 16 Q. Did you have any discussions with
 17 anyone about using the same royalty rate as
 18 in the original agreement for the amendment?
 19 A. I don't remember. I don't recall
 20 that, sitting here, although it's possible I
 21 might have.
 22 Q. You have no recollection either way?
 23 A. Right. Correct.
 24 Q. Did you receive any response from
 25 anyone at Tornado regarding this draft

<p style="text-align: right;">38</p> <p>1 Nathanson</p> <p>2 amendment -- this amendment?</p> <p>3 A. I didn't receive any comments to it.</p> <p>4 Q. I'd like to direct your attention to</p> <p>5 the time of your cover e-mail, that's</p> <p>6 8:27 p.m., correct, on March 20, 2006?</p> <p>7 A. Yes, I was working late.</p> <p>8 Q. Not a unique instance of that, I'm</p> <p>9 sure.</p> <p>10 MS. SAMANTA: I'd like to</p> <p>11 mark, as Defendant's Exhibit 28, a</p> <p>12 document which bears the Bates</p> <p>13 numbers PF133 to 124.</p> <p>14 (Whereupon Document which</p> <p>15 bears the Bates numbers PF133 to 124</p> <p>16 was marked Defendant's Exhibit 28 for</p> <p>17 identification as of this date.)</p> <p>18 Q. If you can take a minute to review</p> <p>19 that.</p> <p>20 Do you recall sending this e-mail on</p> <p>21 or around March 20, 2006 to Issie Wiseman,</p> <p>22 attaching the amendment that we've been</p> <p>23 discussing?</p> <p>24 MR. HOFFMAN: Objection to the</p> <p>25 form. Does he have 28 in front of</p>	<p style="text-align: right;">40</p> <p>1 Nathanson</p> <p>2 Q. Apart from his e-mail from his</p> <p>3 Blackberry, did he later comment on the</p> <p>4 points in your e-mail?</p> <p>5 A. No, he just told me to send it out</p> <p>6 reserving rights; probably because he hasn't</p> <p>7 reviewed it.</p> <p>8 Q. Is that document, sending it out, the</p> <p>9 document that we were previously looking at,</p> <p>10 Defendant's Exhibit 3?</p> <p>11 MR. HOFFMAN: Objection to the</p> <p>12 form.</p> <p>13 A. I believe so. Yes.</p> <p>14 Q. Is it correct that after receiving</p> <p>15 your client's go-ahead to send out the</p> <p>16 document on March 20th at 7:43, you then</p> <p>17 sent it on to Issie Wiseman, which is</p> <p>18 reflected in Defendant's Exhibit 3?</p> <p>19 A. I sent it out, yes, pursuant to his</p> <p>20 instructions with -- obviously, with the</p> <p>21 standard disclaimer.</p> <p>22 Q. I'd like to draw your attention to</p> <p>23 the wording of Defendant's Exhibit 3. It</p> <p>24 says, "I am simultaneously transmitting the</p> <p>25 attached to our client and must, therefore,</p>
<p style="text-align: right;">39</p> <p>1 Nathanson</p> <p>2 him?</p> <p>3 MS. SAMANTA: Oh, I'm sorry.</p> <p>4 I'm mischaracterizing it. Strike</p> <p>5 that.</p> <p>6 Q. Do you recall receiving an e-mail on</p> <p>7 or around March 20, 2006 from Bernt Ullmann,</p> <p>8 asking you to send this e-mail directly to</p> <p>9 Issie Wiseman?</p> <p>10 A. Yes.</p> <p>11 Q. What time is the e-mail from</p> <p>12 Mr. Ullmann?</p> <p>13 A. 7:43 p.m.</p> <p>14 Q. Is the e-mail below an e-mail from</p> <p>15 you to Mr. Ullmann describing the amendment?</p> <p>16 A. Yes. Well, it doesn't describe the</p> <p>17 amendment -- I'm sorry to interrupt you.</p> <p>18 It has certain points that I wanted</p> <p>19 to talk to him about, that I wanted to let</p> <p>20 him know about.</p> <p>21 Q. Did Mr. Ullmann comment on these</p> <p>22 points?</p> <p>23 A. No, it's sent from his Blackberry,</p> <p>24 which usually means he didn't have a chance</p> <p>25 to review it. Other times, he'll do that.</p>	<p style="text-align: right;">41</p> <p>1 Nathanson</p> <p>2 reserve the right to modify same as</p> <p>3 directed."</p> <p>4 A. Yes.</p> <p>5 Q. You had actually sent this to your</p> <p>6 client before?</p> <p>7 MR. HOFFMAN: Objection to the</p> <p>8 form.</p> <p>9 A. I had, but in this e-mail, I was also</p> <p>10 simultaneously transmitting it to him. To</p> <p>11 our client.</p> <p>12 Q. You say, "I'm simultaneously</p> <p>13 transmitting the attached and, therefore,</p> <p>14 reserve the right to modify as directed,"</p> <p>15 but your client had seen the e-mail before?</p> <p>16 MR. HOFFMAN: Objection to the</p> <p>17 form.</p> <p>18 A. He had seen the e-mail, but I am</p> <p>19 assuming that he did not review the</p> <p>20 amendment on his Blackberry. And that's why</p> <p>21 we reserved rights.</p> <p>22 Q. Again, did he ever subsequently send</p> <p>23 you comments to the agreement?</p> <p>24 MR. HOFFMAN: Objection to the</p> <p>25 form. You mean amendment?</p>

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1 Nathanson
 2 MS. SAMANTA: Either way.
 3 A. I don't recall him ever doing that.
 4 MS. SAMANTA: Can we take a
 5 ten-minute break?
 6 MR. HOFFMAN: Sure.
 7 (Brief recess taken.)
 8 Q. I'd like to show you a document
 9 that's been marked as Exhibit 4. This
 10 document is a letter to you from Barry
 11 Siegel, dated March 30, 2006.
 12 Do you remember receiving this
 13 document?
 14 A. Yes, after looking at this, I do.
 15 Q. Prior to receiving this document, do
 16 you recall any conversations that you had
 17 with anyone from Tornado?
 18 A. Until yesterday, I didn't
 19 specifically recall that, but then after
 20 looking at this, I did.
 21 MR. HOFFMAN: "This" being?
 22 Defendant's Exhibit 4?
 23 THE WITNESS: Defendant's
 24 Exhibit 4.
 25 Q. When you say until yesterday, what do

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1 Nathanson
 2 Q. What do you recall now, after meeting
 3 with your Counsel, about that conversation
 4 that you had with someone from Tornado?
 5 MR. HOFFMAN: Objection to the
 6 form.
 7 A. Well, after looking at this document,
 8 I remember a phone call with Barry Siegel.
 9 Q. When you say after looking at this
 10 document, is it because the document says,
 11 "It was a pleasure speaking with you
 12 yesterday"?
 13 A. Yes.
 14 Q. What do you recall of the
 15 conversation with Mr. Siegel?
 16 A. I believe he said, you know, Where do
 17 I send this document that I signed.
 18 Q. When you say "this document," you're
 19 referring to the attachment in Defendant's
 20 Exhibit 4?
 21 A. Correct.
 22 Q. What did you tell Mr. Siegel?
 23 A. That signed documents go through me.
 24 Send it to me.
 25 Q. Did you tell Mr. Siegel anything else

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1 Nathanson
 2 you mean?
 3 A. From the period before yesterday.
 4 Q. I mean, did you meet with your
 5 Counsel to discuss this deposition?
 6 A. Yes.
 7 Q. Was it during that meeting that you
 8 remembered having a conversation with
 9 someone from Tornado prior to receiving this
 10 document?
 11 A. Yes.
 12 Q. What refreshed your recollection, at
 13 that meeting yesterday with your Counsel, of
 14 a conversation with Tornado?
 15 A. I believe it was this document.
 16 Q. Was there anything other than the
 17 document itself that refreshed your
 18 recollection of a meeting with Tornado -- of
 19 a phone call with someone from Tornado?
 20 A. Well, this triggered it, I believe.
 21 Q. When you say "I believe," is there
 22 anything else that triggered it; was there a
 23 conversation with your Counsel that
 24 triggered that recollection?
 25 A. No, it was when I saw this document.

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1 Nathanson
 2 during that phone conversation?
 3 A. Not that I recall.
 4 Q. Did Mr. Siegel tell you anything else
 5 during this conversation?
 6 A. No, not that I recall.
 7 Q. You didn't tell Mr. Siegel that this
 8 was a draft that he was signing and
 9 returning to you?
 10 MR. HOFFMAN: Objection to the
 11 form.
 12 A. No. I mean, he just said, Where do I
 13 send this.
 14 Q. You said to send it to you?
 15 A. I said, you know, these sort of
 16 things go through me.
 17 Q. When you said "these sort of things,"
 18 what were you referring to?
 19 A. Signatures.
 20 Q. Did you relay the conversation that
 21 you had with Mr. Siegel to your clients?
 22 A. No.
 23 Q. Did you relay that conversation to
 24 any senior attorneys in the firm?
 25 A. No.

<p style="text-align: right;">46</p> <p>1 Nathanson</p> <p>2 Q. Did you tell anyone that you received</p> <p>3 the signed document from Mr. Siegel</p> <p>4 reflected in Exhibit 4?</p> <p>5 A. No, I think I just sent it to Peter</p> <p>6 Morris for processing.</p> <p>7 Q. Did you maintain a copy of it in your</p> <p>8 files?</p> <p>9 A. I thought I had, but then it turns</p> <p>10 out I did not, in my paper files.</p> <p>11 Q. When you say you thought you had,</p> <p>12 what time period is that referring to?</p> <p>13 MR. HOFFMAN: Objection to the</p> <p>14 form. Can we just clarify which</p> <p>15 document we're talking about, whether</p> <p>16 it's 4?</p> <p>17 MS. SAMANTA: We're talking</p> <p>18 about 4.</p> <p>19 Q. Did you maintain a copy of Exhibit 4</p> <p>20 in your files?</p> <p>21 A. This document -- I don't think so.</p> <p>22 Q. Did you maintain a copy of the</p> <p>23 attachment to Exhibit 4 in your files?</p> <p>24 A. I did have -- a copy of it was made,</p> <p>25 but it probably was misfiled or misplaced --</p>	<p style="text-align: right;">48</p> <p>1 Nathanson</p> <p>2 Q. Do you usually maintain copies of</p> <p>3 signed documents?</p> <p>4 MR. HOFFMAN: "You" being him</p> <p>5 or the firm?</p> <p>6 Q. You, Mr. Nathanson. I'll ask it</p> <p>7 again: Do you, Mr. Nathanson, usually</p> <p>8 retain copies of signed documents that you</p> <p>9 receive?</p> <p>10 A. Yes.</p> <p>11 Q. I'd like to show you a document</p> <p>12 that's been marked as Defendant's Exhibit 5.</p> <p>13 This is a letter from you to Peter Morris.</p> <p>14 Do you recall sending this letter on</p> <p>15 or about April 5, 2006?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall having conversations</p> <p>18 with anyone at Phat Fashions prior to</p> <p>19 sending this letter?</p> <p>20 A. No.</p> <p>21 Q. Did anybody specifically request that</p> <p>22 you send this letter?</p> <p>23 A. No, this is just what -- it's</p> <p>24 standard for me to send these sort of things</p> <p>25 to Peter Morris for handling.</p>
<p style="text-align: right;">47</p> <p>1 Nathanson</p> <p>2 but a copy of that and a transmittal letter</p> <p>3 to Peter Morris was made. I remember not</p> <p>4 finding it and then finding out later</p> <p>5 that --</p> <p>6 Q. When you say you remember not finding</p> <p>7 it, what time period is that recollection</p> <p>8 from?</p> <p>9 A. Oh, I think it was this year.</p> <p>10 Q. Do you have any more specific</p> <p>11 recollection of what time this year?</p> <p>12 A. Earlier this year.</p> <p>13 Q. January, February, March?</p> <p>14 A. I don't remember exactly.</p> <p>15 Q. First six months?</p> <p>16 A. Probably.</p> <p>17 Q. First three months?</p> <p>18 A. I don't know.</p> <p>19 Q. What was the standard operating</p> <p>20 procedure at Pryor Cashman when you received</p> <p>21 signed documents?</p> <p>22 MR. HOFFMAN: Objection to the</p> <p>23 form.</p> <p>24 A. I don't know if there is a standard</p> <p>25 procedure at Pryor Cashman.</p>	<p style="text-align: right;">49</p> <p>1 Nathanson</p> <p>2 Q. When you say "these sort of things,"</p> <p>3 what do you mean?</p> <p>4 A. Signatures. Partially-signed</p> <p>5 documents.</p> <p>6 Q. Is the signed document that you're</p> <p>7 referring to, that you sent on to Peter</p> <p>8 Morris, the attachment to Exhibit 4?</p> <p>9 A. Yes.</p> <p>10 Q. Why did you send these documents to</p> <p>11 Mr. Morris?</p> <p>12 A. Whenever I get partially-signed</p> <p>13 documents, I send them to Peter Morris for</p> <p>14 internal review and handling.</p> <p>15 Q. By "internal review and handling,"</p> <p>16 what do you mean?</p> <p>17 A. Meaning he starts the process</p> <p>18 internally at Kellwood of reviewing,</p> <p>19 approving any documents before Kellwood</p> <p>20 signs.</p> <p>21 Q. Your letter to Mr. Morris states, and</p> <p>22 this is Exhibit 5, "Please arrange to have</p> <p>23 countersigned where indicated and return one</p> <p>24 fully-executed original to me. Please keep</p> <p>25 one original for your records."</p>

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1 Nathanson
 2 Did I read this correctly?
 3 A. Yes.
 4 Q. Was it your expectation that
 5 Mr. Morris would have the documents
 6 countersigned and returned to you?
 7 A. It was reviewed and approved in
 8 accordance with the typical policy.
 9 Q. Did you ask him to have it reviewed
 10 and approved in accordance with the typical
 11 policy?
 12 A. There is no reason to; that was done
 13 every time.
 14 Q. Did you have a conversation with
 15 Mr. Morris when you transmitted this letter
 16 to him?
 17 A. No need to. The policy was the same
 18 every time.
 19 Q. Did Mr. Morris respond to you in any
 20 way upon receiving this letter from you?
 21 A. Not that I recall.
 22 Q. Did anyone else from Phat Fashions
 23 respond to you upon receiving Mr. Morris'
 24 receipt of this letter?
 25 A. That day?

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1 Nathanson
 2 Q. In response to this letter, at any
 3 time?
 4 A. Not that I recall, specifically, in
 5 response to this letter.
 6 Q. Do you generally recall a
 7 conversation with someone at Phat Fashions;
 8 does this letter refresh your recollection
 9 of a general conversation with someone at
 10 Phat Fashions?
 11 A. About?
 12 Q. It seemed that in your prior answer,
 13 you were thinking of a conversation with
 14 someone at Phat Fashions that didn't
 15 specifically deal with this letter and I'm
 16 trying to understand what that conversation
 17 was?
 18 MR. HOFFMAN: Objection to the
 19 form. You can answer.
 20 A. I believe long after, we might have
 21 talked about the status of this draft.
 22 Q. When you say "we," who are you
 23 referring to?
 24 A. I don't know specifically, but, you
 25 know, probably someone from Kellwood; either

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1 Nathanson
 2 Bernt Ullmann or Counsel or their
 3 assistants.
 4 Q. When you say Counsel, who would that
 5 have been?
 6 A. In-house Counsel at Kellwood.
 7 Q. Who was in-house Counsel at Kellwood?
 8 A. Well, there was first, Don Gramke and
 9 then later on, Luther Rollins.
 10 Q. I'm going to show you a document
 11 that's been marked as Defendant's Exhibit 6.
 12 Can you take a minute to review
 13 Exhibit 6?
 14 A. Okay.
 15 Q. Is this a copy of the agreement that
 16 you received from Mr. Siegel at Tornado?
 17 MR. HOFFMAN: Objection to the
 18 form.
 19 A. No. No, it's not.
 20 Q. How is it different from the
 21 agreement that you received from Mr. Siegel
 22 at Tornado, and what I'm referring to is the
 23 attachment to Exhibit 4?
 24 MR. HOFFMAN: Objection to the
 25 form. You can answer.

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1 Nathanson
 2 A. The document I received from
 3 Mr. Siegel only had signatures from Tornado.
 4 Q. How is this document different?
 5 A. This one has a signature from Russell
 6 Simmons.
 7 Q. The terms of this document, to your
 8 knowledge, are they different from the
 9 document attached to Exhibit 4, which is the
 10 document you received from Mr. Siegel?
 11 A. I have to confirm 100 percent, read
 12 both and compare, but I'm assuming they are.
 13 Q. What is that assumption-based on?
 14 A. That no one changed it in the
 15 interim.
 16 Q. Did you know that this agreement was
 17 signed by Russell Simmons?
 18 A. No.
 19 Q. You were not aware, prior to right
 20 now, that this agreement was signed by
 21 Russell Simmons?
 22 A. Correct.
 23 Q. This is the first you're learning of
 24 this document --
 25 A. Let me correct. It might have been

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1 Nathanson
 2 because anything is possible?
 3 A. Yes.
 4 Q. I'd like to direct your attention to
 5 the e-mail.
 6 A. Okay.
 7 Q. There are three items referred to;
 8 the first one is Tornado, two sets for
 9 signature.
 10 What was your understanding of what
 11 Mr. Morris was doing by this e-mail?
 12 A. When Peter gets signatures for me, he
 13 typically then sends it to general Counsel
 14 who starts the review process, the legal
 15 review process, which is summarizing terms
 16 for the people who need to approve and sign.
 17 Q. Would you expect, after that process
 18 was finished, to receive copies of these
 19 agreements?
 20 MR. HOFFMAN: Objection to the
 21 form.
 22 A. Not in all cases; only if it was
 23 properly reviewed and approved internally.
 24 Q. If the agreement was signed
 25 internally, would you expect to get a copy

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1 Nathanson
 2 Peter on these deals?
 3 A. No, when I send it to Peter, it
 4 usually goes through their normal channels
 5 and procedures, so I just wait.
 6 Q. You don't follow up with your client
 7 to find out if a deal has been done or in
 8 what stage the deal is at?
 9 A. I usually either get a fully-signed
 10 document back or I don't.
 11 Q. I'm going to go through the deals
 12 listed here.
 13 Career license. Did you get a
 14 fully-signed document back?
 15 A. Not at that point. I mean,
 16 eventually I did.
 17 Q. Japan Distribution Agreement; did you
 18 get a fully-signed document back,
 19 eventually?
 20 A. I don't believe that that one closed.
 21 Q. Strategic Partners; did you get a
 22 fully-signed agreement back, eventually?
 23 A. Yes.
 24 Q. Elite Industries; did you get a
 25 fully-signed agreement back, eventually?

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1 Nathanson
 2 of it back?
 3 A. If it was reviewed, approved and
 4 signed by all of the required parties and
 5 they released it to me, I don't have an
 6 expectation until they give it to me fully
 7 signed.
 8 Q. I'd like to show you a document
 9 that's been marked as Exhibit 7, if you
 10 could take a minute to review.
 11 The bottom portion of this document
 12 is an e-mail from you to Bernt Ullmann,
 13 cc'ing Brad Rose of your firm, listing
 14 various deals; is that a correct
 15 characterization?
 16 A. Yes.
 17 Q. Are these deals that you were working
 18 on for Phat Fashions?
 19 A. Yes.
 20 Q. When you say, next to certain of
 21 these deals, that they were in the execution
 22 phase, what did you mean?
 23 A. It means that I've sent them on to
 24 Peter for processing.
 25 Q. Was your protocol to follow up with

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1 Nathanson
 2 A. You know, I can't remember what deal
 3 that was, to tell you the truth. I don't
 4 think it ended up being that entity, so I
 5 can't even place what deal that was.
 6 Q. Vichen; do you recall getting a
 7 fully-signed agreement back, eventually?
 8 A. Yes, that deal closed eventually.
 9 Q. Grupo Eliat; do you recall getting a
 10 fully-signed agreement back, eventually?
 11 A. Yes.
 12 Q. Strech-O-Rama; do you recall getting
 13 back a fully-signed agreement, eventually?
 14 A. Maybe. I think we did a few deals
 15 with them and I don't know specifically what
 16 this one relates to, so it's possible, but I
 17 don't know if every single deal that we did
 18 with them closed.
 19 Q. Millennium; do you recall getting a
 20 fully-signed agreement back, eventually?
 21 A. Yes, I believe we did.
 22 Q. Noho; do you recall getting back a
 23 fully-signed agreement eventually?
 24 A. That was an amendment and I don't
 25 remember if that was ever consummated.

<p style="text-align: right;">62</p> <p>1 Nathanson</p> <p>2 Q. The final document or the final deal</p> <p>3 listed, Modo; do you recall getting back a</p> <p>4 fully-signed amendment eventually?</p> <p>5 A. I don't recall if that amendment was</p> <p>6 ever consummated, although it's possible. I</p> <p>7 just don't remember.</p> <p>8 Q. Are there any of these that you</p> <p>9 specifically recall not getting back a</p> <p>10 fully-signed agreement or amendment?</p> <p>11 A. Yes.</p> <p>12 Q. Which ones?</p> <p>13 A. The Japan Distribution Agreement.</p> <p>14 And Tornado.</p> <p>15 Q. Is it correct to say that Tornado is</p> <p>16 the only agreement listed on here in</p> <p>17 execution phase for which you have no</p> <p>18 recollection of getting back a fully-signed</p> <p>19 amendment or agreement?</p> <p>20 MR. HOFFMAN: Objection to the</p> <p>21 form.</p> <p>22 A. Well, can you repeat that question?</p> <p>23 MS. SAMANTA: Can you read it</p> <p>24 back.</p> <p>25 (Whereupon the record was read</p>	<p style="text-align: right;">64</p> <p>1 Nathanson</p> <p>2 fully-executed agreement or amendment?</p> <p>3 MR. HOFFMAN: Objection to the</p> <p>4 form.</p> <p>5 A. No. No, we didn't get back the Japan</p> <p>6 Distribution Agreement either.</p> <p>7 Q. Let me ask that question again: Is</p> <p>8 Tornado the only deal listed on here in</p> <p>9 execution phase that you remember</p> <p>10 specifically not getting back a</p> <p>11 fully-executed agreement or amendment?</p> <p>12 MR. HOFFMAN: Objection to the</p> <p>13 form.</p> <p>14 A. I guess that is the same question as</p> <p>15 I answered before, but again, Strech-O-Rama</p> <p>16 was in execution phase and then we didn't</p> <p>17 get back a signed agreement until we made</p> <p>18 changes, but other than that, yes.</p> <p>19 MS. SAMANTA: I'd like to</p> <p>20 mark, as Defendant's Exhibit 29, a</p> <p>21 document bearing the Bates numbers</p> <p>22 PF174 to 175.</p> <p>23 (Whereupon Document bearing</p> <p>24 the Bates numbers PF174 to 175 was</p> <p>25 marked Defendant's Exhibit 29 for</p>
<p style="text-align: right;">63</p> <p>1 Nathanson</p> <p>2 back by the reporter.)</p> <p>3 A. It's clear that in the Strech-O-Rama</p> <p>4 example, we did not get it back when it was</p> <p>5 in execution phase. We had to make changes.</p> <p>6 So that one I would say would be -- and</p> <p>7 Tornado as well. Those would look like the</p> <p>8 specific exceptions.</p> <p>9 Q. Let me specify with Strech-O-Rama:</p> <p>10 You said that it is possible that you got</p> <p>11 something back, but you don't know what deal</p> <p>12 this is referring to?</p> <p>13 MR. HOFFMAN: Objection to the</p> <p>14 form. I don't think that was his</p> <p>15 testimony.</p> <p>16 Q. You can go ahead and respond.</p> <p>17 (Whereupon the record was read</p> <p>18 back by the reporter.)</p> <p>19 A. Correct, later on, we may have</p> <p>20 ultimately closed it. I just can't be sure</p> <p>21 because there are a few deals with this</p> <p>22 entity and I would have to look and see.</p> <p>23 Q. Right. Is Tornado the only deal</p> <p>24 listed on here that you remember</p> <p>25 specifically not getting back a</p>	<p style="text-align: right;">65</p> <p>1 Nathanson</p> <p>2 identification as of this date.)</p> <p>3 Q. The top portion of this document is</p> <p>4 an e-mail from you to Don Gramke, dated May</p> <p>5 23, 2006, stating, "Bernt is holding off on</p> <p>6 this extension for now."</p> <p>7 Is that an accurate characterization?</p> <p>8 A. No, this was from Don to me.</p> <p>9 Q. Let me restate that, thank you.</p> <p>10 The top portion of this document is</p> <p>11 an e-mail from Don Gramke to you, dated May</p> <p>12 23, 2006; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you recall receiving this document</p> <p>15 on or around May 23, 2006?</p> <p>16 A. Yes, looking at it now, yes.</p> <p>17 Q. Did you have any conversations with</p> <p>18 Mr. Gramke upon receiving this e-mail?</p> <p>19 A. No.</p> <p>20 Q. Did you have any conversations with</p> <p>21 anyone at Phat Fashions after receiving this</p> <p>22 e-mail?</p> <p>23 A. No.</p> <p>24 Q. Did you inquire as to why this e-mail</p> <p>25 was sent?</p>

<p style="text-align: right;">78</p> <p>1 Nathanson</p> <p>2 Defendant's Exhibit 11?</p> <p>3 A. Oh, no.</p> <p>4 Q. I'd like to show you a document</p> <p>5 that's been marked as Defendant's Exhibit</p> <p>6 12. If you could take a minute to review</p> <p>7 this document?</p> <p>8 A. Okay.</p> <p>9 Q. The first page of this document</p> <p>10 contains e-mails between you and Bernt</p> <p>11 Ullmann, including an e-mail where you</p> <p>12 say -- where you attach an agreement for</p> <p>13 "the new Canadian licensee"; is that a</p> <p>14 correct characterization?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall drafting an agreement</p> <p>17 in or around this time as we've been</p> <p>18 discussing?</p> <p>19 A. Yes.</p> <p>20 Q. You don't recall what the terms of</p> <p>21 that agreement were?</p> <p>22 A. No.</p> <p>23 Q. Do you recall who was to sign that</p> <p>24 agreement?</p> <p>25 A. On behalf of?</p>	<p style="text-align: right;">80</p> <p>1 Nathanson</p> <p>2 single license that was done that had</p> <p>3 material terms or changes in numbers, but</p> <p>4 which is virtually every deal.</p> <p>5 Q. Your e-mail to Ullmann, on the first</p> <p>6 page of Defendant's Exhibit 12, asks him to</p> <p>7 review and let you know if he has any</p> <p>8 comments.</p> <p>9 Then there is an e-mail from him</p> <p>10 saying he will review tomorrow and advise</p> <p>11 accordingly; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall receiving any comments</p> <p>14 from Mr. Ullmann in response to this e-mail?</p> <p>15 A. I don't remember, sitting here,</p> <p>16 although it's possible.</p> <p>17 Q. You have no recollection either way?</p> <p>18 A. Sitting here right now, I don't</p> <p>19 recall. This was a long time ago.</p> <p>20 Q. What is the distinction you're trying</p> <p>21 to make; sitting here right now, is there</p> <p>22 any distinction that you're trying to make?</p> <p>23 A. No, I'm saying it was a long time ago</p> <p>24 and without looking at further</p> <p>25 correspondence or docs, I couldn't say.</p>
<p style="text-align: right;">79</p> <p>1 Nathanson</p> <p>2 Q. On behalf of the Canadian licensee?</p> <p>3 A. The first draft, I don't recall. I</p> <p>4 have to look at it.</p> <p>5 Q. Do you recall who was to sign on</p> <p>6 behalf of Phat Fashions?</p> <p>7 A. Yes, at that time it would have</p> <p>8 been -- who was to sign on behalf of Phat</p> <p>9 Fashions?</p> <p>10 Q. Correct.</p> <p>11 A. It would have been Bob Skinner and</p> <p>12 Russell Simmons.</p> <p>13 Q. When you say "it would have been,"</p> <p>14 what is that based on?</p> <p>15 A. Based on the policy; ever since the</p> <p>16 purchase by Phat Fashions from Kellwood that</p> <p>17 Bob Skinner and Russell Simmons were both</p> <p>18 required to sign any agreements for them to -</p> <p>19 be effective, among other requirements.</p> <p>20 Q. That's not based on your specific</p> <p>21 recollection of these documents that you</p> <p>22 drafted?</p> <p>23 MR. HOFFMAN: Objection to the</p> <p>24 form.</p> <p>25 A. This was in every single deal, every</p>	<p style="text-align: right;">81</p> <p>1 Nathanson</p> <p>2 Q. The answer to the question is that</p> <p>3 you have no recollection either way as to</p> <p>4 whether you received comments from</p> <p>5 Mr. Ullmann to this e-mail?</p> <p>6 A. That's correct.</p> <p>7 Q. I'd like to show you a document that</p> <p>8 has been marked as Defendant's Exhibit 13.</p> <p>9 Have you had a chance to review it?</p> <p>10 A. Yes.</p> <p>11 Q. Is it correct to say that this is an</p> <p>12 e-mail from Bernt Ullmann, in part,</p> <p>13 forwarding your e-mail of October 31, 2006</p> <p>14 on November 2, 2006 and attaching the</p> <p>15 agreement that you had drafted?</p> <p>16 A. Yes.</p> <p>17 Q. Does this refresh your recollection</p> <p>18 in any way as to whether you had a</p> <p>19 conversation with Mr. Ullmann or anyone else</p> <p>20 at Phat Fashions about the agreement?</p> <p>21 A. Any conversations? Not one way or</p> <p>22 the other, no.</p> <p>23 Q. Do you recall seeing any responses</p> <p>24 from Marc Kikon to this e-mail?</p> <p>25 A. I don't recall.</p>

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1 Nathanson
 2 Q. Do you recall seeing any responses
 3 from Gaby Bitton to this e-mail?
 4 A. I don't recall.
 5 Q. Do you recall seeing any responses
 6 from anyone to this e-mail?
 7 A. To this specific e-mail, I don't
 8 recall.
 9 Q. Do you recall seeing any comments
 10 from any of the individuals cc'd, other than
 11 the top portion of Defendant's Exhibit 13,
 12 to this agreement?
 13 A. No, I don't recall receiving comments
 14 from them, although we did receive comments.
 15 Q. How do you know that you did receive
 16 comments?
 17 A. At some point in the process, we
 18 started to negotiate the draft with Counsel.
 19 Q. Who did you negotiate the draft with?
 20 A. I believe his name was Clifford.
 21 Q. Clifford --
 22 A. Halickman, H-A-L-I-C-K-M-A-N.
 23 Q. When you say "we" started to
 24 negotiate the draft; first of all, you're
 25 referring to the agreement attached to

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1 Nathanson
 2 A. No.
 3 Q. Did Mr. Halickman ever mention
 4 Tornado?
 5 A. No.
 6 Q. Is Mr. Halickman the only person that
 7 you dealt with in negotiating this
 8 agreement?
 9 A. I believe so, yes.
 10 Q. Again, you don't recall the substance
 11 of any of your conversations with
 12 Mr. Halickman?
 13 A. Not right now. I'd have to see
 14 documents and drafts to see the exact
 15 comments and, you know, there were several
 16 rounds. I remember it was a long
 17 negotiation.
 18 MS. SAMANTA: I want to put
 19 this on the record. I don't believe
 20 that we received any documents
 21 between Mr. Nathanson and
 22 Mr. Halickman.
 23 I'd like to call for the
 24 production of those documents.
 25 MR. HOFFMAN: Until this

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1 Nathanson
 2 Defendant's Exhibit 13, among other
 3 exhibits?
 4 A. The agreement is not here, but I'm
 5 assuming, yes.
 6 Q. When you say "we" started to
 7 negotiate the draft, who is the "we"?
 8 A. Sorry, I did, as part of the firm.
 9 Q. What comments did Mr. Halickman have
 10 on your draft?
 11 A. There were several. I don't
 12 remember. I mean there were several rounds
 13 or comments.
 14 Q. You don't remember what any of the
 15 comments were?
 16 A. I'd have to look at the documents and
 17 we also had phone calls.
 18 Q. Do you remember anything that you
 19 discussed in those phone calls with
 20 Mr. Halickman?
 21 A. They were comments to the draft
 22 agreement and I believe further drafts down
 23 the line.
 24 Q. Did you ever, in your negotiations
 25 with Mr. Halickman, discuss Tornado?

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1 Nathanson
 2 testimony just now, I wasn't aware of
 3 the existence of Mr. Halickman. What
 4 I said to Adam at the last deposition
 5 is that we had produced all of the
 6 documents that I was aware of,
 7 certainly between our client or our
 8 firm and representatives of Gaby
 9 Bitton, up until the time that this
 10 case went to litigation.
 11 I'm going to go back and make
 12 sure that that's the case because
 13 beyond the time of this litigation,
 14 this commenced, I don't see what the
 15 relevance is. We know from the
 16 documents that the parties are
 17 clearly talking, but I can go back
 18 and look.
 19 MS. SAMANTA: I just want to
 20 state that I don't necessarily agree
 21 with the time cutoff that you've
 22 stated, but I believe, at least some
 23 of the documents that Mr. Nathanson
 24 is referring to, are prior to the
 25 commencement of this litigation.